

Message Text

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ORIGIN INT-05

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TO CINCPACREP GUAM PRIORITY

UNCLAS STATE 007144

E.O. 11652: N/A

TAGS: PGOV, GQ

SUBJECT: TT CODE INFO FOR DOTA

DOTA NO. 004-MS

PASS TO CMDR. WESTLAKE FOR PICKUP BY CAPT. RICHARD SCOTT
FOR RELAY TO DOTA FRED M. ZEDER.

BACKGROUND

THE THREE AREAS EXAMINED IN ORDER TO BACKSTOP YOUR EFFORTS
AT PREVENTING WASTE AND POSSIBLE CORRUPTION IN THE TTPI
ARE (1) TREATMENT OF CRIMES--TT CODE TITLE 11 (ELEVEN)
(2) LEGISLATION TO PROVIDE ACCOUNTABILITY AND (3) THE
PROSECUTING ABILITY OF THE TRUST TERRITORY OFFICE OF
ATTORNEY GENERAL.

CRIMES. WITH REGARD TO TT CODE TREATMENT OF CRIMES, WE
FIND THAT FOR THE MOST PART, LAWS ARE ON THE BOOKS, WHICH,
IF ENFORCED, WOULD BE ADEQUATE TO PREVENT MUCH WASTE AND
DETER CORRUPTION. THE FOLLOWING SITUATIONS ARE ADEQUATELY
COVERED BY THE REFERENCED SECTION OF THE CODE.

A. THEFT (INCLUDING LARCENY, FALSE PRETENSES,
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EMBEZZLEMENT, RECEIVING STOLEN GOODS,

UNLAWFUL ISSUANCE OF BANK CHECKS OR DRAFTS)
11 TTC 851-857

B. FILING FALSE CLAIMS AGAINST THE GOVERNMENT
(E.G. TRAVEL VOUCHERS) 11 TTC 853

C. FORGERY 11 TTC 701

D. WILLFUL DAMAGE TO OR DEFAACEMENT OF GOVERNMENT
PROPERTY 11 TTC 951

E. INCOME TAX EVASION 77 TTC 264

F. SOCIAL SECURITY TAX EVASION 73 TTC 5

G. UNAUTHORIZED USE OF GOVERNMENT VEHICLES OR
EQUIPMENT 11 TTC 1405

THERE ARE, ON THE OTHER HAND, AREAS WHERE THE CODE COULD
BE BEEFED UP INCLUDING (1) A CHANGE IN THE PROVISION
DEALING WITH MISCONDUCT IN OFFICE, (2) THEFT OF
ELECTRICITY AND WATER AND (3) BONDED WAREHOUSING. PART
OF THE ATTACHED DRAFT BILL SEEKS TO DEAL WITH THESE

AREAS WHERE DEFICIENCIES EXIST.

ACCOUNTABILITY. TO AID IN THE ADMINISTRATION OF FUNDS
UNDER TTPI CONTROL, THE ATTACHED DRAFT BILL PROVIDES:

(1) THAT NO TTPI CONTRACT EXCEEDING ()
DOLLARS SHALL BE VALID UNLESS IT IS APPROVED
BY THE:

- A. CONTRACTING OFFICER,
- B. DIRECTOR OF THE DEPARTMENT INVOLVED,
- C. DIRECTOR OF PROGRAM AND BUDGET,
- D. DIRECTOR OF FINANCE, AND
- E. ATTORNEY GENERAL.

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(2) FOR BIENNIAL INVENTORY OF PROPERTY OWNED BY
TTPI OR UNDER ITS JURISDICTION.

(3) FOR PROHIBITION OF DEFICIENCY FINANCING.

(4) FOR PROHIBITION AGAINST USE OF CONGRESS OF
MICRONESIA FUNDS FOR PURPOSES NOT APPROVED
BY CONGRESS OF MICRONESIA AND MONTHLY REPORTS
AS TO STATUS OF CONGRESS OF MICRONESIA FUNDS.

PROSECUTION. AFTER SEARCHING THROUGH THE TT CODE, WE SEE
AS EVEN MORE IMPORTANT THAN LEGISLATION, THE EXPANSION
OF THE INVESTIGATING AND PROSECUTING ABILITIES OF THE

TT GOVERNMENT. IT NEEDS COMPETENT INVESTIGATORS IN ADDITION TO LAWYERS WITH TRIAL EXPERIENCE. BY AND LARGE THE CRIMINAL LAWS ARE ON THE BOOKS. ACTIVE AND COMPETENT PROSECUTION IS WHAT IS NEEDED.

WE SUGGEST THAT THE AG'S OFFICE HIRE ADDITIONAL AND EXPERIENCED PERSONS FOR THE FOLLOWING WORK:

WE SUGGEST THAT ADDITIONAL PERSONS BE HIRED AS FOLLOWS:

1. THE AG'S OFFICE WOULD HIRE A PERSON WITH BROAD AND SUCCESSFUL TRIAL EXPERIENCE TO BE CHIEF, TRIAL DIVISION.
2. THE AG'S OFFICE WOULD ESTABLISH A DIVISION OF INVESTIGATION (AND AUDIT) WITH THREE PROFESSIONAL EMPLOYEES. THIS DIVISION WOULD FUNCTION SOMETHING AKIN TO THE FBI IN THAT ITS SOLE TASK WOULD BE INVESTIGATION WHICH NECESSARILY INCLUDES AUDIT. TO DATE WE KNOW OF NO INVESTIGATIONS OR PROSECUTIONS FOR SALARY, GROSS REVENUE OR SOCIAL SECURITY TAX EVASION. THE INVESTIGATION (AND AUDIT) DIVISION WOULD BE FREE OF THE LAW ENFORCEMENT RESPONSIBILITY SHOULDERED BY THE MICRONESIA POLICE AND THUS COULD CONCENTRATE ON WHITE-COLLAR CRIME AND GAINING THE NECESSARY FACTS FOR PROSECUTION OF IMPORTANT CRIMINAL CASES.
3. FOUR OR FIVE ATTORNEYS, WITH TRIAL EXPERIENCE, UNDER THE ADMINISTRATIVE JURISDICTION OF SPECIFIC GOVERNMENTAL DEPARTMENTS AND UNDER THE TECHNICAL JURIS-UNCLASSIFIED

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DICATION OF THE ATTORNEY GENERAL. THIS ACTION WOULD ENSURE THAT THE DEPARTMENTS ARE GIVEN THE SPECIALIZED ADVICE THEY NEED BUT NOW LACK. ON THE OTHER HAND IT PROVIDES COORDINATION WITH THE AG'S OFFICE WHICH WILL BE ESPECIALLY IMPORTANT SHOULD CASES ENTER THE TRIAL STATE.

4. SUCH PUBLIC DEFENDERS AS ARE NECESSARY.

SPEECH:

IN YOUR SPEECH BEFORE THE COM YOU MIGHT CONSIDER TOUCHING ON THE FOLLOWING POINTS.

A. THE U.S. SENATE REPORT AND YOUR OWN INVESTIGATION UNCOVERED A NUMBER OF SHORTCOMINGS IN TTPI ADMINISTRATION, ETC. ETC.

B. THERE WILL BE A TWO PRONGED ATTACK ON ABUSES. THE HIGH COMMISSIONER WILL ON THE ONE HAND, SUBMIT LEGISLATION:

1. TIGHTENING UP TT CONTRACT APPROVAL
2. REQUIRING A BIENNIAL PHYSICAL INVENTORY OF PROPERTY OWNED BY THE TT OR FOR WHICH IT IS CUSTODIAN

3. PROHIBITING USE OF COM FUNDS WITHOUT SPECIFIC APPROVAL OF COM
4. MAKING THEFT OF ELECTRICITY A CRIME
5. MAKING THEFT OF WATER A SPECIFIC CRIME
6. MAKING RELEASE OF GOODS FROM A WAREHOUSE WITHOUT A BILL OF LADING A CRIME
7. BEEFING UP MISCONDUCT A PUBLIC OFFICE AND
8. PROHIBITING OVER-OBLIGATION AND PROVIDING PENALTIES THEREFOR.

C. ON THE OTHER HAND THE OFFICE OF ATTORNEY GENERAL WILL BE EXPANDED WITH THE ADDITION OF:

1. CHIEF, TRIAL DIVISION - WHICH POSITION WILL BE FILLED BY AN EXPERIENCED TRIAL ATTORNEY WHO WILL CONCENTRATE HIS EFFORTS ON IMPORTANT CASES, AND
 2. THREE INVESTIGATION AND AUDIT PEOPLE WHO WILL FORM A NEW BRANCH IN THE OFFICE OF ATTORNEY
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GENERAL CALLED THE INVESTIGATION (AND AUDIT) DIVISION. AS INDICATED BY ITS TITLE THIS DIVISION WILL HAVE RESPONSIBILITY FOR THE INVESTIGATION OF IMPORTANT CRIMINAL CASES AND PERFORM INVESTIGATIVE AUDITS WHERE NECESSARY.

3. FOUR OR FIVE ATTORNEYS UNDER THE ADMINISTRATIVE JURISDICTION OF SPECIFIC GOVERNMENTAL DEPARTMENTS AND UNDER THE TECHNICAL JURISDICTION OF THE ATTORNEY GENERAL.

D. SHOULD THERE BE A NEED FOR ADDITIONAL PUBLIC DEFENDERS, THEY WILL BE PROVIDED.

LEGISLATION:

WE SUGGEST THAT THE HIGH COMMISSIONER PREPARE A BILL FOR PRESENTATION TO THE CONGRESS OF MICRONESIA WHICH INCLUDES THE FOLLOWING SECTIONS: (HE SHOULD REVIEW THE SUBJECT MATTER AND COORDINATE WITH DOTA FOR POSSIBLE DUPLICATION OF EXISTING LAW, PROPER CODE REFERENCES, LANGUAGE AND SYNTAX.)

1. NO TRUST TERRITORY CONTRACT EXCEEDING () DOLLARS SHALL BE VALID UNLESS IT IS APPROVED BY:

- A. THE CONTRACTING OFFICER,
- B. THE DIRECTOR OF THE DEPARTMENT INVOLVED,
- C. THE DIRECTOR OF PUBLIC WORKS,
- D. THE DIRECTOR OF PROGRAM AND BUDGET,
- E. THE DIRECTOR OF FINANCE, AND

F. THE ATTORNEY GENERAL.

2. THE HIGH COMMISSIONER SHALL BIENNIALY CAUSE THE TAKING OF A PHYSICAL INVENTORY OF ALL CAPITALIZED PROPERTY WITH A VALUE OF 300 DOLLARS OR MORE OWNED BY THE TRUST TERRITORY OR FOR WHICH IT IS CUSTODIAN. THE RESULTS OF SUCH PHYSICAL INVENTORY SHALL BE RECONCILED WITH THE RELATED PROPERTY AND ACCOUNTING RECORDS.

3. THE TRUST TERRITORY GOVERNMENT IS HEREBY UNCLASSIFIED

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PROHIBITED FROM USING CONGRESS OF MICRONESIA FUNDS FOR PURPOSES NOT APPROVED BY THE CONGRESS OF MICRONESIA AND SHALL ISSUE MONTHLY REPORTS AS TO THE STATUS OF CONGRESS OF MICRONESIA FUNDS.

4. THEFT OF ELECTRICITY; INJURING OR ALTERING METER.

EVERY PERSON WHO WILLFULLY, AND KNOWINGLY WITH INTENT TO INJURE OR DEFRAUD, MAKES OR CAUSES TO BE MADE ANY CONNECTION WITH THE ELECTRIC LINES OF ANY AGENCY OR CORPORATION AUTHORIZED TO GENERATE, TRANSMIT OR SELL ELECTRIC CURRENT BY MEANS OF ELECTRIC WIRE OR ELECTRIC APPLIANCE OF ANY CHARACTER WHATSOEVER WITHOUT THE WRITTEN AUTHORITY OF SUCH AGENCY OR CORPORATION OR WHO SHALL, KNOWINGLY AND WITH LIKE INTENT INJURE, ALTER OR PROCURE TO BE INJURED OR ALTERED ANY ELECTRIC METER, OR OBSTRUCT ITS WORKING, OR PROCURE THE SAME TO BE TAMPERED WITH OR INJURED, OR USE OR CAUSE TO BE USED ANY ELECTRIC METER, OR APPLIANCE SO TAMPERED WITH OR INJURED, SHALL BE DEEMED GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE IMPRISONED FOR NOT MORE THAN SIX MONTHS OR FINED NOT MORE THAN ONE HUNDRED DOLLARS, OR BOTH.

5. THEFT OF WATER. EVERY PERSON WHO, WITH INTENT TO INJURE OR DEFRAUD, CONNECTS OR CAUSES TO BE CONNECTED, ANY PIPE, TUBE, OR OTHER INSTRUMENT, WITH ANY MAIN, SERVICE-PIPE, OR OTHER PIPE, OR CONDUIT OR FLUME FOR CONDUCTING WATER, FOR THE PURPOSE OF TAKING WATER FROM SUCH MAIN, SERVICE-PIPE, CONDUIT OR FLUME, WITHOUT THE KNOWLEDGE OF THE OWNER THEREOF, AND WITH INTENT TO EVADE PAYMENT THEREFOR, AND EVERY PERSON WHO, WITH INTENT TO INJURE OR DEFRAUD, INJURES OR ALTERS ANY

WATERMETER, WATERMETER SEAL, SERVICE VALVE, OR OTHER SERVICE CONNECTION, IS GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE IMPRISONED FOR NOT MORE THAN SIX MONTHS OR FINED NOT MORE THAN ONE HUNDRED DOLLARS, OR BOTH.

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6. BAILEE; UNLAWFUL DELIVERY OF GOODS; PUNISHMENT.
ANY BAILEE WHO DELIVERS GOODS OUT OF THE POSSESSION OF SUCH BAILEE KNOWING THAT A NEGOTIABLE DOCUMENT OF TITLE THE NEGOTIATION OF WHICH WOULD TRANSFER THE RIGHT OF THE POSSESSION OF SUCH GOODS IS OUTSTANDING AND UNCANCELED WITHOUT OBTAINING POSSESSION OF SUCH DOCUMENT AT OR BEFORE THE TIME FOR SUCH DELIVERY SHALL, EXCEPT IF A COURT HAS FOUND THAT THE DOCUMENT HAS BEEN LOST, STOLEN OR DESTROYED, AND HAS ORDERED DELIVERY OF THE GOODS OR ISSUANCE OF A SUBSTITUTE DOCUMENT, BE GUILTY OF A MISDEMEANOR AND UPON CONVICTION THEREOF SHALL BE IMPRISONED FOR NOT MORE THAN SIX MONTHS OR FINED NOT MORE THAN ONE HUNDRED DOLLARS, OR BOTH. "PAILEE" MEANS THE PERSON WHO IN THE NORMAL COURSE OF BUSINESS POSSESSES GOODS OF OTHERS AND DELIVERS THEM UPON PRESENTATION TO HIM OF A BILL OF LADING OR OTHER DOCUMENT OF TITLE.

7. 11 TTC 1051 (MISCONDUCT IN PUBLIC OFFICE) SHALL BE AMENDED BY INSERTING AFTER THE WORD "ACTS" THE FOLLOWING WORDS, "OR PERSONALLY RECEIVE ANY BENEFITS WHATSOEVER EXCEPT FOR GOVERNMENT SALARY"

8. A. NO OFFICER OR EMPLOYEE OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS SHALL MAKE OR AUTHORIZE AN EXPENDITURE FROM OR CREATE OR AUTHORIZE AN OBLIGATION UNDER ANY APPROPRIATION OF THE UNITED STATES CONGRESS OR CONGRESS OF MICRONESIA OR FUND IN EXCESS OF THE AMOUNT AVAILABLE THEREIN; NOR SHALL ANY SUCH OFFICER OR EMPLOYEE INVOLVE THE GOVERNMENT IN ANY CONTRACT OR OTHER OBLIGATION, FOR THE PAYMENT OF MONEY FOR ANY PURPOSE, IN ADVANCE OF APPROPRIATIONS MADE FOR SUCH PURPOSE, UNLESS SUCH CONTRACT OR OBLIGATION IS AUTHORIZED BY UNITED STATES OR TRUST TERRITORY LAW.

B. NO OFFICER OR EMPLOYEE OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS SHALL AUTHORIZE OR CREATE ANY OBLIGATION OR MAKE ANY EXPENDITURE IN EXCESS OF AN APPORTIONMENT OR REAPPORTIONMENT.

C. IN ADDITION TO ANY PENALTY OR LIABILITY
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UNDER OTHER LAW, ANY OFFICER OR EMPLOYEE OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS WHO SHALL VIOLATE

SUBSECTIONS (A), (B), OR (C) OF THIS SECTION SHALL BE

SUBJECTED TO APPROPRIATE ADMINISTRATIVE DISCIPLINE, INCLUDING, WHEN CIRCUMSTANCES WARRANT, SUSPENSION FROM DUTY WITHOUT PAY OR REMOVAL FROM OFFICE; AND ANY OFFICER OR EMPLOYEE OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS WHO SHALL KNOWINGLY AND WILLFULLY VIOLATE SUBSECTIONS (A), (B), OR (C) OF THIS SECTION SHALL, UPON CONVICTION, BE IMPRISONED FOR NOT MORE THAN ONE YEAR OR FINED NOT MORE THAN 1,000 DOLLARS OR BOTH.

D. IN THE CASE OF A VIOLATION OF SUBSECTIONS (A), (B), OR (C) OF THIS SECTION BY AN OFFICER OR EMPLOYEE OF AN AGENCY, THE HEAD OF THE AGENCY CONCERNED SHALL IMMEDIATELY REPORT TO THE HIGH COMMISSIONER AND TO THE CONGRESS ALL PERTINENT FACTS TOGETHER WITH A STATEMENT OF THE ACTION TAKEN THEREON.

E. NO AMOUNT SHALL BE RECORDED AS AN OBLIGATION OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS UNLESS IT IS SUPPORTED BY DOCUMENTARY EVIDENCE OF--

(1) A BINDING AGREEMENT IN WRITING BETWEEN THE PARTIES THERETO, INCLUDING GOVERNMENT AGENCIES, IN A MANNER AND FORM AND FOR A PURPOSE AUTHORIZED BY UNITED STATES OR TRUST TERRITORY LAW, EXECUTED BEFORE THE EXPIRATION OF THE PERIOD OF AVAILABILITY FOR OBLIGATION OF THE APPROPRIATION OR FUND CONCERNED FOR SPECIFIC GOODS TO BE DELIVERED, REAL PROPERTY TO BE PURCHASED OR LEASED, OR WORK OR SERVICES TO BE PERFORMED; OR

(2) A VALID LOAN AGREEMENT, SHOWING THE AMOUNT OF THE LOAN TO BE MADE AND THE TERMS OF REPAYMENT THEREOF; OR
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(3) AN ORDER REQUIRED BY UNITED STATES OR TRUST TERRITORY LAW TO BE PLACED WITH A GOVERNMENT AGENCY; OR

(4) AN ORDER ISSUED PURSUANT TO A UNITED STATES OR TRUST TERRITORY LAW AUTHORIZING PURCHASES WITHOUT ADVERTISING WHEN NECESSITATED BY PUBLIC EXIGENCY OR FOR PERISHABLE SUBSISTENCE SUPPLIES OR WITHIN SPECIFIC MONETARY LIMITATIONS; OR

(5) A GRANT OR SUBSIDY PAYABLE (I) FROM APPROPRIATIONS MADE FOR PAYMENT OF OR

CONTRIBUTIONS TOWARD, SUMS REQUIRED TO
BE PAID IN SPECIFIC AMOUNTS FIXED BY
UNITED STATES OR TRUST TERRITORY LAW
OR IN ACCORD WITH FORMULAE PRESCRIBED
BY UNITED STATES OR TRUST TERRITORY
LAW, OR (II) PURSUANT TO AGREEMENT
AUTHORIZED BY, OR PLANS APPROVED IN
ACCORD WITH AND AUTHORIZED BY, UNITED
STATES OR TRUST TERRITORY LAW; OR

(6) A LIABILITY WHICH MAY RESULT FROM
PENDING LITIGATION BROUGHT UNDER
AUTHORITY OF UNITED STATES OR TRUST
TERRITORY LAW; OR

(7) EMPLOYMENT OR SERVICES OF PERSONS OR
EXPENSES OF TRAVEL IN ACCORD WITH
UNITED STATES OR TRUST TERRITORY LAW,
AND SERVICES PERFORMED BY PUBLIC
UTILITIES; OR

(8) ANY OTHER LEGAL LIABILITY OF THE
TRUST TERRITORY OF THE PACIFIC ISLANDS
AGAINST AN APPROPRIATION OR FUND
LEGALLY AVAILABLE THEREFOR.

F. NO APPROPRIATION OR FUND WHICH IS LIMITED
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FOR OBLIGATION PURPOSES TO A DEFINITE PERIOD OF TIME
SHALL BE AVAILABLE FOR EXPENDITURE AFTER THE EXPIRATION

OF SUCH PERIOD EXCEPT FOR LIQUIDATION OF AMOUNTS
OBLIGATED IN ACCORD WITH SUBSECTION (F) OF THIS SECTION;
BUT NO SUCH APPROPRIATION OR FUND SHALL REMAIN
AVAILABLE FOR EXPENDITURE FOR ANY PERIOD BEYOND THAT
OTHERWISE AUTHORIZED BY UNITED STATES OR TRUST TERRITORY
LAW.

ACTING DOTA RICE SENDS. KISSINGER

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<< END OF DOCUMENT >>

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